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REPORT
99-116

AMENDING TITLE XI OF THE EDUCATION AMENDMENTS OF 1978, RELATING TO INDIAN EDUCATION PROGRAMS

JULY 26, 1985.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1398]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1398) to amend title XI of the Education Amendments of 1978, relating to Indian education programs, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

(1) On page 2, line 5, strike out "is amended by adding" and insert in lieu thereof the following:

is amended—

(1) by striking out "thereafter" in the second sentence and inserting in lieu thereof ", within 60 days thereafter,"; and

(2) by adding

(2) On page 3, strike out lines 4 through 8 and insert in lieu thereof the following:

(3) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) Within one year of the date of the enactment of the Indian Education Technical Amendments Act of 1985, the Bureau shall, either directly or through contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract schools. Such standards shall yield data results comparable to those used by Bureau schools."

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(3) On page 3, beginning on line 23, strike out "requirements of" and all that follows through "closure," on line 24 and insert in lieu thereof "requirements of this subsection shall not apply when a temporary closure,".

(4) On page 5, line 15, strike out "following the academic year in which" and insert in lieu thereof "after".

(5) On page 6, beginning on line 12, strike out "second sentence" and insert in lieu thereof "second and third sentences", and on line 21 insert before the quotation marks the following: "Nothing in this Act shall be construed to require the provision of separate support services for Indian education.".

(6) On page 10, line 14, strike out "and"; and on line 17 strike out the period and insert in lieu thereof "; and"; and after such line insert the following new paragraph:

(7) by striking out "with or" in such paragraph.

(7) On page 11, line 8, strike out "and", and after such line insert the following new paragraph (and redesignate the succeeding paragraph accordingly):

(2) by striking out "and contract"; and

(8) On page 11, after line 18, insert the following new subsection (and redesignate the succeeding subsections accordingly):

(b) PRORATION OF PAY.—Section 1140A(a) of the Act (as so redesignated) is amended—

(1) by inserting "including laws relating to dual compensation," after "provision of law,"; and

(2) by inserting ", including benefits under unemployment or other Federal or federally-assisted programs," after "pay or benefits".

(9) On page 11, strike out lines 15 through 18 and insert in lieu thereof the following:

(1) by redesignating sections 1141 and 1142 as (as added by the Education Amendments of 1984) as sections 1140a and 1140B, respectively; and

(2) by striking sections 1143 (as added by such Amendments).

(10) On page 12, strike out lines 1 through 11.

PURPOSE

S. 1398 will amend Title XI of the Education Amendments of 1978, relating to the administration of Indian education programs within the Bureau of Indian Affairs. Specifically, S. 1398 makes technical amendments to Public Law 98–511, passed late in the 98th Congress, which amended Title XI of the Education Amendments of 1978 (Public Law 95–561). Although these amendments were enacted as Title V of Public Law 98–511, the implementation of the BIA education provisions was prohibited by a moratorium included in the fiscal year 1985 Appropriations Act. The one-year moratorium on the expenditure of any funds by the Bureau of Indian affairs to implement these provisions occurred as a result of concerns expressed by the Appropriations Committees and the Ad-

ministration about the feasibility of implementing certain provisions of the Act. The provisions addressed such different areas as immunization standards, school closures, academic standards, school boundaries and the education functions of the Bureau of Indian Affairs. The technical amendments contained in S. 1398 are intended to resolve the Administration's concerns and to lift the moratorium on the implementation of the 1984 amendments.

Background and Need

Over the years, Congress has guided the evolution of federal Indian education policies through legislation like the Indian Education Act of 1972, the Indian Self-Determination and Educational Assistance Act of 1975 and Title XI of the Education Amendments Act of 1978, among others. Each of these federal laws sought to strengthen the quality of education services provided to Indian students and to increase the involvement of Indian communities and parents in education programs.

The Title XI provisions of the Education Amendments of 1978 (P.L. 95-561) represents the most recent and sweeping federal policy for Indian education. This law mandated that the Bureau of Indian Affairs develop national standards for federal and tribally-controlled schools serving Indian students. It provided for the reorganization of BIA education operations and administration. Furthermore, it required that Indian tribes and parents be involved to a greater degree in the planning and monitoring of the programs for their children. Despite the laying of a broad federal Indian education policy, the 1978 Act has yet to be fully implemented. Although it has been over six years since the passage of this Act, the Bureau of Indian Affairs has not developed regulations to implement the provisions of the law.

Consequently, in early 1984, in response to the failure of the BIA to develop regulations for the implementation of the 1978 education amendments, more specific amendments were included as part of H.R. 11, a bill which provided for a number of education programs. H.R. 11 was subsequently amended to S. 2496, "The Adult Education Act Amendments of 1984." This bill was eventually signed into law (P.L. 98-511), but soon after its passage, the Appropriations Committee included language in its fiscal year 1985 appropriations act barring the implementation of the laws' provisions due to the concerns raised by the Administration and the Interior Appropriations Subcommittee.

During the last six months, the Select Committee on Indian Affairs has worked to alleviate these concerns. Primarily those concerns involved budgetary costs of implementing the academic standards, the need for clarification on the requirements for establishing boundaries for BIA schools, school closure procedures, audits, waiver of housing rents and contracting functions within the Bureau's Indian Education Programs. S. 1398 clarifies and refines the amendments enacted in P.L. 98-511. It is the intent of these amendments to improve the administration of the Bureau's education programs and therefore, improve the delivery of educational services to Indian children.

LEGISLATIVE HISTORY

S. 1398 was introduced by Senator Andrews for himself and Senators Melcher, DeConcini, Abdnor, and Burdick on June 27, 1985. An identical companion bill, H.R. 2908, was introduced on the same date. The Select Committee on Indian Affairs held a hearing on S. 1398 on July 17, 1985. The House Education and Labor Committee ordered H.R. 2908 favorably reported on July 23, 1985, with technical amendments. The Select Committee on Indian Affairs held a business meeting on July 24, 1985, at which time it ordered S. 1398 reported favorably, with amendments. The amendments are identical to those reported by the House Education and Labor Committee.

EXPLANATION OF MAJOR PROVISIONS

IMMUNIZATIONS

In the Committee's view, the BIA's request for language to clarify that IHS is responsible for the costs of inoculations is unncessary. The Committee expects IHS to continue its present practice of funding immunizations.

TRIBAL WAIVER OF STANDARDS

A drafting error in the 1984 amendments inadvertently deleted the last sentence of 1121(d) and it is now restored. In reference to the BIA's authority to deny Tribal recommendations for standards, the Committee wants to make clear that arbitrary and capricious denials of tribal recommendations are not acceptable; such denials would violate the provision. The "good cause" parameters should be established through regulations for the BIA to use to meet the intent of the provision.

CONTRACT SCHOOL STANDARDS

The Bureau standards developed under 20 U.S.C. 1121 (b) and (c) do not apply to contract schools unless a contract school elects under 1121(e) to have them apply. Standards developed by contract schools through the P.L. 93-638 process and which are incorporated into contracts are Bureau standards for purposes of this section. Modifications to these standards and technical assistance shall be carried out in manner consistent with P.L. 93-638 practices, and instances where the Bureau refuses to accept them shall be subject to the declination procedures.

STUDY OF CONSISTENT REPORTING SYSTEM

The purpose of the study is to find a method for generating cost figures that are consistent among contract schools and that are comparable to those produced by the Bureau's cost-accounting system. The intent is to provide information to allow Congress and the Administration to compare costs and needs among contract schools, as well as between contract schools and BIA schools. The Committee does not intend this study to require uniformity in cost accounting and fiscal controls for contract schools. Contract schools reflect many differences in size, sophistication and relationship to

other tribal entities. The study is therefore to be user-sensitive and user-oriented so that it does not lead to increased workloads or reporting requirements for affected schools. Modifications of the P.L. 93-638 reporting requirements, rather than a new set of requirements, should be the method used. The Committee also stresses the need for an objective study. If the Bureau decides to do the study "in-house", it is the Committee's intent that the Bureau consult at every step in the process with contract schools. The Committee prefers that a National Indian organization be the contractor for the study. If necessary, there is nothing in this section that would preclude subcontracts between an Indian contractor and non-Indian entities for components that might require special expertise.

SCHOOL CLOSURES

The Committee stresses that it does not intend the Bureau to define the term "active consideration" in a restrictive fashion that would vitiate the protections this section is intended to establish.

A "substantial curtailment" would involve any decrease in service to a significant percentage of the group who are defined by the serivce to be decreased, e.g., in geographical terms (cutback in transportation), by age or grade (eliminating a grade or imposing class size restrictions), or by service provided (closing or restricting boarding operations). In arriving at the percentage that will be affected, only those receiving or eligible to receive the service in the immediate future shall be included in the computations. The percentage which represents a significant curtailment shall be determined in each individual case, but in any case where it is 33 percent or greater, it shall be considered a substantial curtailment.

At the Bureau's request, the Committee has included a provision for closures for unforeseen emergencies. The Committee intends that such emergency closures, (e.g., fire, flood, earthquake), be temporary and in no case more than one year unless special circumstances exist that would preclude reopening within that year. If such circumstances exist, closure may continue beyond one year *provided* a report on the special circumstances is submitted to the affected tribe or tribes, the school board, and the Congress. If the Bureau decides to make a temporary change permanent in nature, the Bureau must use the regular closure procedures. This provision is not to be used for closure of facilities that have been, either deliberately or through neglect, allowed to deteriorate to the point where a health or safety risk occurs.

The Committee understands that current requirements for consultation are not being met to the satisfaction of affected parties. Although the Committee has declined to set out specific steps for a consultation process since this is a matter normally left to Administrative determination, it strongly recommends that current practices be recognizably improved.

SCHOOL BOUNDARIES

When the Bureau establishes attendance boundaries, it should take into account public school service to Indian children and shall not regard as exclusive any public school boundary where such school has not provided equal service to Indian students in the past

(e.g., where bus routes are not run on a consistent year-round basis). Such issues must be resolved before attendance areas of public schools may be deemed exclusive. The same factors should be considered when determining the need for contract schools. Boundaries are more than lines drawn on a map and the Bureau should, in implementing these amendments, develop a procedure for allowing students with special needs to receive the educational consideration they deserve.

At Navajo, there is a special situation with respect to development of boundaries and the Committee directs the BIA to cooperate with the Navajo Tribal boundaries initiative to prevent disruption in the educational programs of Indian children. The Committee recognizes that contract schools at Navajo are included in the current BIA boundary system. As long as this is agreeable to all parties, the Committee sees no reason why this should not continue.

CONTRACTING COORDINATION

The Committee deleted transfer of contract functions to the Education Division but does not intend to signal an acceptance of the status quo. Improvements are necessary and the Committee will continue to review this situation to be sure that real coordination between education and support personnel becomes the norm. The Committee is especially concerned about timeliness of actions with respect to contract applications and modifications.

The Committee has removed the moratorium on new school starts that occurred during the 1985 appropriations process for those schools whose contract applications were submitted prior to October 1, 1984. These applications are to be reviewed under the rules and guidelines that were in place when the application was submitted.

PERSONNEL

The BIA raised concerns with respect to provisions dealing with personnel and the Committee restates that there is no requirement for separate personnel services for the Education Division. In the area of personnel, all supervisory and evaluative matters shall be under the control of the Education Division, while all other matters relating to personnel, such as paperwork processing, payroll actions, etc., are not affected.

FACILITIES MANAGEMENT

The Committee amendments are intended to clarify that no separate facilities maintenance service for education is required. Field officials, using BIA guidelines, will be initially responsible for computing operations needs "from the field up" so that the figures provided to Congress by the Central Office will produce a realistic Budget Request. Education Division input into the process, through recommendations and review, is required. Distribution of appropriated funds will continue as presently done, with no segregation of funds for education. The BIA will compute the O&M funds that are included in the distribution which can reasonably be stated to have

been attracted by the education needs in each area and agency and communicate this information to field personnel.

The Committee intends the education and facilities management personnel at the local level work together to jointly establish a maintenance plan and timeline. Facilities personnel will perform all work but, on a regular basis (e.g. quarterly), education personnel will be required to certify that the work is being performed. While the funds will continue to be handled by the Division to which they are now allocated, continued availability of funds attracted by education facilities needs will depend on this certification. This provision does not alter the current practices where, under 638 contracts, the BIA assumes responsibility for maintenance and management. The uses to which a BIA education facility is put is to be under the control of local education personnel and is not to be "second-guessed" by other divisions of the BIA.

SUMMER SCHOOL PROGRAMS

Although the Committee withdrew a clause requiring ISEF funding of year-round school programs, this is not to be construed as lack of Committee support for summer enrichment and recreation programs. The Committee directs that local school board decisions on summer programs are not to be overturned without using appropriate statutory procedures. The Committee further directs the BIA to develop specific procedures for approval of summer school programs; such procedures shall not include requirements with respect to Chapter 1 funding beyond those already in place for Chapter 1 summer programs.

FORWARD FUNDING

The 1984 amendment authorizing forward funding is unlikely to be implemented in the near future. However, the benefits of forward funding are clear and the Committee is committed to its ultimate implementation. However, to obtain some relief to schools from unstable funding problems, the Committee has added a provision allowing Congress the additional funding option known as advance funding. This form of funding allows the Appropriations Committees to include two amounts of money in one appropriations act, the first amount to be available immediately for the year covered by the Act. The second amount would not be available for obligation or expenditure until the next fiscal year but the funds would be available for earlier distribution to schools through a process of notice of allotments. Then, at the beginning of the second fiscal year, the funds would become automatically available for distribution with no further administrative action required.

PROCUREMENT

The Committee has changed the amount authorized for local, non-competitive procurement authority from a percentage of budget to a fixed amount which is small enough to allow for careful monitoring of this new authority.

Committee Recommendations and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on July 24, 1985, with a quorum present recommends by a unanimous vote that the Senate pass S. 1398 as amended. The amendments which appear on Page 1 of this report, are explained in the Section-by-Section analysis that follows.

Section-by-Section Analysis and Explanation of Committee Amendments

Section (2)(a): The 1984 amendments clarified that when a Tribe chooses to waive BIA school standards, it must propose alternatives. The authority for the Assistant Secretary to make final determinations on the standards to be used was accidentally deleted prior to final passage. This sentence is added back. A Committee amendment requires a tribe to submit alternative standards within 60 days of its waiver of Bureau standards.

Section 2(b) (1) and (2): Clarifies that the deadline for meeting standards is two years from the date of enactment of these amendments or from the date of initial contract. The section also makes clear that where a school fails to meet standards, its contract will not be terminated until it has received technical assistance from the BIA for at least one year to help the school come into compliance.

Section 2(b)(3): The 1984 amendments require that a study be conducted to set up a uniform accounting system for contract schools and that such study be conducted by a national Indian organization. S. 1398 provides that the study may be done by the BIA in-house or by any Indian organization in case there is no national organization that can do the work. The scope of the study is clarified to be sure the end product is user sensitive. A Committee amendment further clarifies that the study only affects reporting standards.

Section 2(c): The 1984 amendments limit the BIA's right to discipline employees for failure to meet new standards. This provision has been deleted because existing protections are adequate.

Section 2(d): Concern was raised that the timing of 1984 amendments on school closures would be retroactive and force the reopening of schools already closed. This section makes it clear that the closure provisions are prospective and will take effect on date of enactment of S. 1398. The closure provisions will also apply to peripheral dorms and there are technical amendments to make the language on "closure, consolidations, and substantial curtailments" consistent throughout the section.

The section also clarifies that notice must be given when a closure, consolidations or curtailment is being given "active" consideration. The BIA is to report to Congress, and the affected tribes and school boards, on the impact of any proposed action on students. No irreversible action may be taken until after the academic year in which report is issued. An emergency closure exception is made for threats to health and safety and a Committee amendment further refines this to make it clear such emergencies shall result in temporary closure only.

Section 3: Since passage of the 1984 amendments, the BIA has designated school boundaries for all BIA schools. This section provides that no further changes or alterations may be made without tribal notice and opportunity to propose alternative boundaries. Tribes may petition for changes to existing boundaries and the Secretary must accept such changes unless he finds that the revised boundaries do not meet student needs.

Section 4(a): In response to unconscionable delays in processing contracts, the 1984 amendments transferred contract responsibility to the Education Division. The Administration expressed strong objections to this transfer and 4(a) will delete the transfer and reinstate P.L. 95–561 language requiring greater coordination between the Education Division and other divisions of the Bureau that handle contracting matters. The bill also provides that school contracts submitted prior to October 1, 1984 will be reviewed under rules in existence at the time of application. This will eliminate a serious inequity caused by bureaucratic delays. A Committee amendment further clarifies that a separate personnel service is not required.

Section 4(b): The 1984 amendments were interpreted by the BIA to require a totally separate support service for education facilities management. This was not the intent and this section clarifies that no separate services are required but that the Education Division will continue to control disbursement of education-related maintenance funds. The annual report to Congress will include a 5-year plan for capital improvement and BIA is required to set up a system for performing routine maintenance.

Section 4(b)(6): Deletes 1984 provision that Education Division personnel will control facilities usage.

Section 5(a): The 1984 amendments require that the BIA consider funding year-round educational programs. Although establishment of such programs is not required, the BIA opposes even consideration of this activity and the bill deletes the 1984 language.

Section 6(a): Last year, the 1984 amendments had a provision for advance funding of BIA education programs. The Administration suggested forward funding and so forward funding was substituted. It is clear that forward funding is not practicable at this time so S. 1398 restores advance funding as an option to avoid an initial "double funding" appropriation. Now the Administration opposes both forward and advance funding, although neither is required but are options of the Congress. There is also a technical change to correct a citation for the section establishing allotments.

Section 6(a) (5) and (6): The 1984 amendments give local officials authority to procure supplies and equipment without competition for an amount of up to 10 percent of their budget. Concern has been raised that this figure could be very high for some schools and perhaps lead to waste, fraud or other abuse. S. 1398 limits the amount to $25,000 per year and allows the BIA to set guidelines. A Committee amendment further clarifies that additional supplies can be purchased through regular procurement procedures.

S. 1398 also makes clear that last year's amendment on Tribal divisions of education did not establish a separate program but make it an acceptable activity for funding under the Self-Determination Act.

Section 7: Clarifies that the 1984 amendments requiring 3-year audits apply only to BIA schools since contract schools are audited under terms of contracts.

Section 8: Technical amendment to clarify that the Workers Compensation and Federal Tort Claims Acts apply to volunteers. A proposed Committee amendment would delete contract schools from this section as federal limits on volunteers do not apply to contract school employees. Committee amendment modifies the pay proration section so that dual compensation does not violate the law.

Section 9: This Section allows the Secretary the option to implement a provision on extracurricular activities and clarifies that stipends for such activities are to be regionally determined.

Section 9(c): The 1984 amendments allow school districts to waive up to 90 percent of housing rents to attract and keep employees. S. 1398 as introduced decreased the rent waiver to 40 percent and clarified that it would be used only at isolated schools. It also clarified that summer rents could be waived only for persons who are involuntarily placed on non-pay furlough and who have not found other employment. The Administration continued to oppose this waiver section and the bill, as reported, deletes the waiver provision entirely. A renumbering technical amendment is also included in this section.

Section 10: The 1984 amendments, as amended by S. 1398, will become effective on date of enactment of this bill, with the exception of amendments to Sections 504, 505, and 506 of the 1978 Indian Education Act which will become effective on October 1, 1985.

Cost and Budgetary Consideration

The cost estimated for S. 1398 as provided by the Congressional Budget Office are outlined below:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 24, 1985.

Hon. Mark Andrews,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has examined the federal cost impact of S. 1398, the Indian Education Technical Amendments Act of 1985, as ordered reported by the Senate Select Committee on Indian Affairs July 24, 1985. This bill amends Title XI of the Education Amendments of 1978 regarding the Bureau of Indian Affairs (BIA) education programs by making technical amendments relating to BIA school boundaries, closings, consolidations, and standards. This bill would also change the authorization for appropriation from forward-funded to advance-funded.

Based on our analysis there would be no change in federal costs as a result of this bill. S. 1398 amends certain administrative procedures and guidelines for the operation of BIA schools included in the recently passed Education Amendments of 1984 (P.L. 98–511) and would not affect federal costs. P.L. 98–511 authorized the forward-funding of appropriations of these BIA programs; this bill

changes that to advance-funding of appropriations. Both forward and advance funding provide for the appropriation of funds a year in advance but allow a slightly different timing in obligation of those funds. To date, Congress has only provided current-year funding for these programs.

This bill would not affect the budgets of state and local governments.

Please call me if you have any questions or have your staff contact Deborah Kalcevic (226–2820).

With best wishes,

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the provisions of the bill.

The Committee believes that S. 1398 will have minimal regulatory and paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee did not receive a legislative report from the U.S. Department of the Interior giving the Administration's views of S. 1398. The following testimony was presented at the Committee's July 17, 1985, hearing.

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY–INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1398, THE INDIAN EDUCATION TECHNICAL AMENDMENTS ACT OF 1985, JULY 17, 1985

Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1398, the "Indian Education Technical Amendments Act of 1985".

We recommend enactment of S. 1398 with the amendments discussed in this statement and its attachment.

S. 1398 would make a number of changes in the amendments to title XI of the Education Amendments of 1978 which were enacted in sections 502–512 of P.L. 98–511, the Education Amendments of 1984. Implementation of those 1984 amendments is blocked by a provision in P.L. 98–473, the Interior and Related Agencies Appropriations Act for FY 1985. The President's FY 1986 Budget proposes to continue blocking their implementation. If S. 1398 is enacted with the amendments we recommend, it would not be necessary to further block implementation of the 1984 amendments.

In general, S. 1398 makes significant improvements in the 1984 amendments and we appreciate the work of this Committee and its staff that has led to its introduction and the scheduling of this hearing and your July 24 markup of the bill. We urge the Commit-

tee to act favorably on our recommendations at the markup session.

Attached to this statement is a detailed discussion of the concerns we have with the 1984 amendments that S. 1398 would alleviate and of our other concerns that require amendments to the bill. Although each of our recommendations merit favorable action by the Congress, I would like to make special mention of certain of our concerns.

Section 512 of the 1984 amendments enacted a provision that (1) authorizes nonreviewable waivers by local BIA school supervisors (on a school-wide basis) of up to 90% of rental fees payable by educators living in Federal employee housing, and (2) waives all such rental fees otherwise payable by educators who are in a non-pay status while school is not in session. Section 9(c) of S. 1398 would amend that provision to (1) limit the waiver to 40% while school is in session, (2) allow those waivers only for educators at an "isolated school", and (3) waive all rental fees for all educators while school is not in session if they are "in involuntary non-pay status and * * * have not obtained employment".

We believe the rent waiver provision is an attempt to solve a problem that can and has already been solved administratively. A change in the method of determining rents for Federal employee housing in remote locations has resulted in substantial reductions in rental rates, effective next month. Furthermore, rent waivers as a recruiting or retention incentive is not necessary because the Congress has already authorized a "postdifferential not to exceed 25 percentum of the rate of basic compensation, on the basis of conditions of environment or work which warrant additional pay as a recruitment and retention incentive" in section 1131(h)(3) of P.L. 95-561 (25 U.S.C. 2011(h)(3)).

Although S. 1398 would reduce the financial impact of the rental waiver provision in the 1984 amendments, the Administration continues to strongly oppose the provision not only because it is unnecessary but because of (1) the potential cost, (2) its discrimination against other educators not living in Federal employee housing and other Federal employees in general, and (3) the undermining of the Secretary's authority by the delegation of final authority directly to subordinate employees.

We strongly recommend that S. 1398 be amended to include a repeal rather than an amendment of the rental waiver provision enacted in section 512 of the 1984 amendments as a new section 1143 of P.L. 95-561 (25 U.S.C. 2023). A second concern we have is with the interpretation of the provision that would be amended by section 2(a) of S. 1398. That amendment does not address a possible interpretation of section 1129(d) of P.L. 95-561 where school standards could be waived, and the school would then be without standards permanently or for a lengthy period because alternative standards are not proposed to the Secretary. We believe that such an interpretation is not consistent with the intent of Congress. We strongly recommend that the provision be further amended in S. 1398 to provide that the waiver expires in 60 days if aiternative standards are not proposed to the Secretary.

A third concern is with the part of the amendment in section 3 of S. 1398 dealing with attendance boundaries which would require

the Secretary to accept boundaries proposed by a tribe unless he makes certain findings. It is more appropriate for the tribe to make a case for its proposed boundaries than it is to impose the findings requirement on the Secretary especially since the language refers to the needs of students which do not relate to attendance boundaries.

We strongly recommend that language relating to the findings be deleted and replaced by language such as that in section 2(a) of the bill relating to rejection of alternative standards.

Our fourth concern is with the forward and advanced appropriation funding provisions. Not only are such provisions unnecessary because of an earlier student count, we have serious concerns as to their workability and fairness to the schools involved by requiring earlier allocation of funds than is necessary based on old or possibly incomplete or inaccurate data. We strongly recommend that the advanced funding procedure in section 6(a)(1) through (4) of S. 1398 be deleted and that the bill include a repeal of the forward funding procedure in section 1129(a)(2) of P.L. 95–561.

The Office of Management and Budget has advised us that enactment of S. 1398 with the amendments recommended in this statement would be in accord with the program of the President.

This concludes my prepared statement and I will be pleased to answer any questions that the Committee may have.

ATTACHMENT

Issue: Section 502(a) of the 1984 amendments amended the school standards provisions in the Education Amendments of 1978 (P.L. 95–561) to require immunization for childhood diseases, including provisions for in-school immunization, where necessary. S. 1398 includes no provision on this subject.

Discussion: The Bureau of Indian Affairs (BIA) school applications ask if students have been immunized, but the BIA does not require that students be immunized before entering school. If a student has not been immunized, the school usually works with the Indian Health Service (IHS) to have the student immunized by or through the IHS.

Recommendation: Include in S. 1398 an amendment to section 1121(b)(2) of P.L. 95–561 (25 U.S.C. 2001(b)(2)) to make it clear that the establishment of the immunization standard does not alter the existing IHS responsibility for giving or paying for the immunizations.

Issue: Section 502(b) of the 1984 amendments amends P.L. 95–561 to require tribal governing bodies to propose alternative school standards if they waive the Secretary's standards.

Discussion: P.L. 95–561 allowed tribal governing bodies or their designated school boards to waive standards in part or in whole and to propose revised standards. However, they are not required to submit alternative standards if they waive standards. The Administration's substitute for the provisions that became the Indian Education Amendments of 1984 as proposed to the House Education and Labor Subcommittee and the Conferees, would allow tribes or their designated school boards to propose supplementary standards subject to availability of other funds, but not to waive

standards. It is unclear whether the provision would permit a waiver of standards to continue even if the tribe fails to propose alternative standards.

Recommendation: Section 2(a) of S. 1398 should be amended to add language in section 1121(d) of P.L. 95-961 (25 U.S.C. 2001(d)) to provide that a waiver of the standards expires if proposed alternative standards are not submitted to the Secretary within 60 days.

Issue: Section 502(c) (2) and (3) of the 1984 amendments requires that a contract school (i.e., a school operated by a tribal organization under a contract with the BIA) meet established standards or become accredited (or a candidate for accreditation) within 2 years of its initial BIA contract.

Discussion: P.L. 95-561 barred the Secretary from using as a reason for declining to contract with a tribal organization for the operation of a school, the school's failure to meet standards. The 1984 amendment would bar funding for contract schools which have had contracts for over two years if they don't meet the standards when they go into effect.

Section 2(b) (1) and (2) of S. 1398 would revise the 1984 amendment to clarify that current contract schools must meet the standards (or be accredited or candidates) within 2 years following the date of enactment of S. 1398 and to require a one year notice to a school of their noncompliance before rescinding or not renewing a contract. In addition, the Secretary would be required to provide technical assistance to a school during the notice period to aid it in achieving compliance.

Recommendation: Enact section 2(b) (1) and (2) of S. 1398.

Issue: Section 502(c)(3) of the 1984 amendments added a requirement to P.L. 95-961 that the BIA contract with a national Indian organization to establish uniform fiscal fund accounting procedures for contract schools (i.e., schools aided under a contact with the BIA).

Discussion: P.L. 95-561 did not have a provision dealing with accounting procedures. The Administration's substitute bill in the 98th Congress would not require the BIA to contract with a national Indian organization to establish accounting procedures for contract schools. S. 1398 would amend the provision to add the option of the accounting procedures being developed "in-house" but precluding contracting for that purpose with other than a Indian organization. This is an unwarranted restriction which could prevent the development of the best possible procedures if there is no qualified Indian organization available to contract for preparation of the procedures.

Recommendation: Amend section 2(b)(3) of S. 1398 by striking out "with an Indian organization" on page 3, line 7.

Issue: Section 502(d) of the 1984 amendments added a provision to P.L. 95-561 specifying that education personnel cannot be held responsible for meeting standards if the Secretary has not requested sufficient funds to meet the standards.

Discussion: The Administration opposed the 1984 provision on the basis that it was unnecessary because the proposed school standards specifically detail when an employee is responsible for implementing standards (subpart G 36.60). The Administration argued that this provision could result in the inability of the

Bureau to enforce appropriate personnel actions. S. 1398 would repeal the provision.

Recommendation: Enact section 2(c) of S. 1398.

Issue: Section 502(e) of the 1984 amendments added a provision to P.L. 95-561 requiring the Secretary to prescribe regulations for the closure or consolidation of schools. The regulations must require immediate notification to affected tribes, schools, parents, etc. that the Bureau is considering a closure or consolidation. A study would be required of each child's placement prior to closure and a report must be made to Congress describing the plan for the closure or consolidation. No school may be closed until the end of the academic year following the academic year in which the report is sent to Congress.

Discussion: This Administration has closed and consolidated some Bureau schools; however, not without pressure to keep some of them open. The Administration opposed the 1984 amendment because it precluded timely administrative actions necessary for economy and efficiency and to provide a viable education program for Indian children. The BIA has regulations in the clearance process which provide a procedure for school closures and consolidations.

Section 2(d) of S. 1398 would make a number of changes in the 1984 provision including permitting actions necessary for health or safety reasons. The required procedure would apply to the substantial curtailment of the program of a BIA school or peripheral dormitory. It is not clear whether the provision would apply to summer programs the provision or extent of which is dependent on the resources remaining at the end of the regular school year. Also, the required report to the Congress with respect to a BIA school or peripheral dormitory must be submitted in the academic year prior to its proposed last full academic year. Such an early date precludes the use of the latest (3rd week in September) student count in reaching a decision that an action is necessary. Lastly, the provision does not apply to actions involving contract schools.

Recommendation: Amend section 2(d) of S. 1398 as follows:

(1) on page 3, line 17 insert "or financially aided under a contract" after "operated";

(2) on page 3, line 20 insert "(except a summer program)" after "program";

(3) on page 5, lines 14 through 16 strike out "until the end of the first full academic year following the academic year in which such report is made" and insert in lieu thereof "until the academic year end after the calendar year in which the report is submitted to Congress".

Issue: Section 503 of the 1984 amendments added a provision to P.L. 95-561 to require the Secretary to establish geographical attendance areas for each Bureau school. Tribal governing bodies have 1 year from the date of enactment of the 1984 amendments to propose boundaries. The Secretary must accept tribes proposed boundaries unless the Secretary determines that they do not meet the needs of Indian students. If a reservation has only one BIA school, the attendance boundaries will be the reservation's boundaries. Students residing near the reservation shall also receive services.

Discussion: School boundaries have been established in consultation with the tribes and have been implemented this school year and we opposed the 1984 amendment as unnecessary. S. 1398 would rewrite the provision to apply to the establishment of or changes to boundaries after enactment of the bill. Boundaries proposed by a tribe must be accepted unless the Secretary finds that they "do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs." This is an inappropriate burden for the Secretary and boundaries do not relate to student needs.

Recommendation: Section 3 of S. 1398 should be amended by deleting the language on page 6, lines 6 through 9 and inserting in lieu thereof "specifically rejected by the Secretary for good cause and the Secretary notifies the affected tribe or local school board in writing of such rejection. Such rejection shall be final and not reviewable.".

Issue: Section 504(a) of the 1984 amendments amended P.L. 95-561 to require that all contract functions relating to education be supervised by the Director, Office of Indian Education Programs (OIEP).

Discussion: Currently OIEP staff and contract staff work together on most education contracts, however, educators do not have the authority to sign contracts. The Administration opposed the 1984 provision as unnecessary since under the preexisting language of P.L. 95-561 those functions could be under the Director's supervision, and because it requires additional staff.

Section 4(a) of S. 1398 would delete the requirement for supervision of contract functions and replaces it with language similar to that repealed by the 1984 amendment which requires the Assistant Secretary for Indian Affairs to provide for the coordination of contract functions involving education.

Section 4(a) of S. 1398 also adds a new provision requiring the Secretary to "review the applications for the new school starts which were filed with the Bureau before October 1, 1984, under the rules and guidelines in effect on the date the application was filed." The provision apparently applies to two schools which would be singled out to not have to meet the new regulations for new school starts which are in the clearance process and are compatable with the views of the Senate Appropriations Committee. Such an exception for these two schools is unwarranted and unfair to the other proposed new school starts.

Recommendation: Section 4(a) of S. 1398 should be amended by deleting all after the word "education" on page 6, line 17 and inserting a period.

Issue: Section 504(b) and (c) of the 1984 amendments added a provision to section 1126(c) of P.L. 95-561 which requires that education staff in BIA agencies under the supervision of the Director of OIEP provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions.

Discussion: The provision clearly prescribes separate OIEP personnel support services at the agency level. This change would affect about 25 or one quarter of the agency offices, since the others do not deal with personnel matters at that level. Additional

staff would be required. The Administration strongly opposes separate support services for OIEP.

Recommendation: Section 4 of S. 1398 should be amended to delete clause (2) of section 1126(c) of P.L. 98-561 (25 U.S.C. 2006(c)(2)).

Issue: Section 504(d) of the 1984 amendments added a new section 1126(d) to P.L. 95-561 requiring the Assistant Secretary for Indian Affairs to submit in the annual Budget a plan for "school facilities" to be constructed, for establishing priorities among projects, and for the improvement and repair of "education facilities".

The new provision also requires that local BIA education personnel coordinate with BIA Agency Superintendents for the maintenance of education facilities. Funds appropriated for such maintenance are to be allocated directly to BIA education personnel and may not be used by the BIA Agency Superintendent until the BIA Agency Education Administrator is assured that the necessary maintenance has been, or will be performed in a reasonable manner.

Discussion: Currently the Bureau of Indian Affairs prepared a priority list of new construction projects that is published in the Federal Register and used as the basis for construction dollars in the budget, but BIA does not have a priority list for operation and maintenance funding. The new provision now in section 1126(d) of P.L. 95-561 does not consider other BIA facility needs such as jails, administrative facilities, etc. The centralization of the maintenance activities is more effective than dividing the responsibility. The Administration opposed the new provision because of the cumbersome inefficient procedures required and because it is an undue interference with Executive Branch prerogatives.

Section 4(b) of S. 1398 makes a number of amendments including one to paragraph (1) of section 1126(d) which adds "a 5-year plan for capital improvements" to the material to be submitted by the Assistant Secretary in the annual budget for the BIA. The only significant improvement in the amendments to paragraph (2) is to delete the requirement that the Director, OIEP implement the operation and maintenance program for education facilities. Paragraph (2) is also amended to require that the operation and maintenance program include "a system for the conduct of routine preventative maintenance". The bill would delete paragraph (3) which requires the Director, OIEP "supervise all Bureau education facilities, including local Bureau housing constructed for the purpose of housing Bureau personnel at the school site".

Recommendation: All of the text of section 4(b) of S. 1398 on page 6, line 23 through page 8, line 2 should be deleted and replaced by the word "repealed."

Issue: Section 505(a) of the 1984 amendments added the following new criteria to be considered for funding under the Indian School Equalization Formula (ISEF) for distributing funds appropriated for the operation of schools:

(1) special transportation and other costs of isolated and small schools;

(2) the costs of boarding arrangements, where determined necessary by a tribal governing body or designated local school board;

(3) costs associated with greater lengths of service by educational personnel;

(4) special programs for gifted and talented students; and

(5) costs associated with operating education and recreational programs on a 12-month basis.

Discussion: The five new criteria are additional factors to be considered in establishing the interim ISEF already established under the regulations implementing P.L. 95-561. Since the BIA is currently establishing a new funding procedure to be based on the school standards, it is unlikely that all these factors would be incorporated into the formula. The Administration opposed the fifth criteria because it would provide authority for additional obligations which could cost $15-$20 million annually. Section 5(a) of S. 1398 would delete that criteria.

The first new criteria above mostly duplicated a criteria ("isolation of the school") already in the same subsection. The third new criteria is not feasible to implement because of continuous changes in staffs at the schools. The fourth new criteria is premature because such a pilot program is being initiated in the next school year.

Recommendation: Amend section 5(a) of S. 1398 to also strike out the criteria designated (E), (G), and (H) in section 1128(a)(2) of P.L. 95-561 (25 U.S.C. 2008(a)(2)).

Issue: Section 505(b)(2) of the 1984 amendments added a new section 1128(c)(2) to P.L. 95-561 requiring that each BIA and contract schools receive an equal amount of funds for school board training and costs of membership in appropriate organizations.

Discussion: When P.L. 95-561 was first implemented, each of the school boards were given an equal amount ($5,000) for training. Because of our concerns and those of the Appropriations Committees with achieving the best use of the funds, the training is now provided on a national basis through contract. This system has been more cost effective and generally better training has been provided. There is also some concern that funding membership in organizations could be indirectly funding lobbying efforts.

Recommendation: Amend S. 1398 to add a provision striking section 1128(c)(2) of P.L. 95-561 (25 U.S.C. 2008(c)(2)).

Issue: Section 505(b)(3) of the 1984 amendments added a new section 1128(c)(3) to P.L. 95-561 requiring the Secretary to provide indirect costs to contract schools in an amount equal to what it would cost the Secretary to operate the school. ISEF money could not be used to pay indirect costs.

Discussion: Defining and funding indirect costs are Bureauwide problems. This provision essentially only limits the BIA from using ISEF funds to pay indirect costs because the rest of the language is the same as the language in P.L. 93-638. The Administration opposed the amendment because it is unnecessary.

Recommendation: S. 1398 should be amended to add a provision striking section 1128(c)(3) of P.L. 95-561 (25 U.S.C. 2008(c)(3)).

Issue: Section 505(c) of the 1984 amendments added a new section 1128(e) to P.L. 95-561 requiring a separate fund for monetary

awards and quality step increases. Payments from this fund would not be allowed to affect school allotments.

Discussion: The Administration opposed this provision arguing that awards and quality step increases are part of salary costs and should be funded the same way. This provision requires that an employee's quality step increase would always be paid from this fund while the rest of the employee's salary would be paid from another fund. This procedure could be a bookkeeping nightmare.

Section 6(b) of S. 1398 would eliminate the current language in section 1128(e) and would substitute "Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section."

Recommendation: Enact section 6(b) of S. 1398.

Issue: Section 506(a)(1) and (2) of the 1984 amendments added a new section 1129(a)(2) authorizing forward funding of ISEF appropriations.

Discussion: The Administration supported the concept of forward funding and included a forward funding provision in its substitute bill. However, forward funding language in the FY 1985 Appropriation Bill was dropped by the Conferees because of the BIA's change to an earlier count week which addressed most of the concerns expressed by school boards.

Section 6(a)(1) through (4) of S. 1398 would add a new advanced funding authorization option for use "as provided in the appropriation Act". The new provision is undesirable because it requires the allocation of a large amount of funds earlier than necessary and based on prior year data. Further, the provision could be detrimental to schools by requiring the final allocation of funds by a date so early it could preclude the use of accurate student count information for the distribution.

Recommendation: Section 6(a)(1) through (4) of S. 1398 should be stricken and replaced by a repeal of section 1129(a)(2) of P.L. 95–561 (25 U.S.C. 2009(a)(2)).

Issue: Section 506(a)(2) of the 1984 amendments also added a new section 1129(a)(3) to P.L. 95–561 authorizing a school supervisor (subject to school board approval) to spend up to 10% of allotted funds for procurement of supplies and equipment with or without competitive bidding.

Discussion: That provision (if implemented) will remove millions of dollars from any system of checks and balances. The potential for waste alone, not to mention fraud and abuse, is extremely high under those conditions.

Section 6(a)(5) and (6) of S. 1398 would amend that provision to make the use subject to "guidelines established by the Assistant Secretary" and to change the 10% of allotted funds to "no more than $25,000 annually". Many small schools have a total purchasing budget of less than $25,000.

Recommendation: Even with the improvements in the amendments in section 6(a)(5) and (6) of S. 1398, we believe that the authority is undesirable as well as unnecessary and we would prefer that section 1129(a)(3) of P.L. 95–561 (25 U.S.C. 2009(a)(3)) be repealed. However, we do not object to S. 1398 because of its failure to repeal the provision.

Issue: Section 506(b) of the 1984 amendments added a sentence to section 1129(c) of P.L. 95-561 requiring the Secretary to have a program to fund tribal divisions of education and to develop tribal education codes.

Discussion: The language of this amendment could be interpreted as an entitlement program thereby potentially funding every tribe; or it could be interpreted as a program based on available funds. The Administration opposed the provision because of the financial impact and because it could be an intrusion on tribal government rights by requiring them to have divisions of education and tribal education codes.

Section 6(b) of S. 1398 amends the provision to make the establishment of tribal divisions of education and the development of tribal education codes eligible subjects for grants under section 104(a) of P.L. 93-638 (25 U.S.C. 450h(a)).

Recommendation: The amendment in S. 1398 alleviates our concerns with the provision. However, it should be noted that the provision as amended by the bill is unnecessary because section 104(a) of P.L. 93-638 already authorizes financial assistance for "the strengthening or improvement of tribal government".

Issue: Section 507 of the 1984 amendments amended sections 1129(b) and 1131(d) of P.L. 94-561 to require that a supervisor's appeal of a local school board's decision must be in writing describing the action and the reason the supervisor believes the decision should be overturned. The school board is to receive a copy of the appeal and have an opportunity to respond.

Discussion: The original appeals process in P.L. 95-561 did not require that everything be in writing, and did not give the school board an opportunity to respond to the appeal in writing. The Administration included this provision in its substitute bill in the 98th Congress. However, since then the same procedures have been incorporated in BIA's regulations now in clearance.

Recommendation: Although the provisions are unnecessary, we do not object to S. 1398 because of its failure to repeal them.

Issue: Section 508 of the 1984 amendments amended section 1132 of P.L. 95-561 so that it now requires the Secretary to have a management information system for education data within one year of enactment of the Education Amendments of 1984.

Discussion: This amendment changed section 1132 by requiring the information system to be available to OIEP within one year of enactment of the amendment. The Administration opposed this provision on the basis that it required a separate information system for the OIEP. The language of the amendment is not clear on this point. Furthermore, the OIEP has continued to develop and is using a management information system. S. 1398 includes no provision on this subject.

Recommendation: Although the amendments to section 1132 were unnecessary and unclear, we do not object to S. 1398 because of its failure to repeal them.

Issue: Section 509 of the 1984 amendments added a new section 1136(b) to P.L. 95-561 (25 U.S.C. 2016(b)) requiring the Inspector General to insure that financial and compliance audits are conducted of the BIA, the OIEP, and the BIA schools at least once every three years.

Discussion: The Administration opposed this provision because the Inspector General has adequate authority to insure that such audits are conducted and that further legislation "is unnecessary and will needlessly complicate and confuse the legal authority of such audits" (quote from testimony of Deputy Assistant Secretary for Indian Affairs (Operations) April 9, 1984, before the House Subcommittee on Elementary, Secondary, and Vocational Education).

Section 7 of S. 1398 would amend the provision to delete the requirement for audits of the BIA and the OIEP but not the audits of the BIA schools.

Recommendation: We do not object to S. 1398 because of it failure to completely repeal section 1136(b).

Issue: Section 511 of the 1984 amendments added a new section 1140 to P.L. 95–561 allowing the BIA and OIEP employees to accept volunteer services for Bureau and contract schools.

Discussion: The Administration did not include this provision in its substitute bill in the 98th Congress because there was not time to throughly analyze the effect on existing statutory authorities.

Section 8 of S. 1398 amends section 1140 to place the authority in the Secretary and to provide that the volunteers are Federal employees only for purposes of the Federal Tort Claims and Compensation for Work Injuries laws.

Recommendation: Enact section 8 of S. 1398.

Issue: Section 512 of the 1984 amendments added a new section 1141 that allows educational personnel to choose to receive their annual salary over a 12-month period instead of a 9 or 10-month period. An employee's choice could change twice a year.

Discussion: BIA has developed a plan to permit a once a year choice to receive pay over a 12 month or a school year period. It was believed that no new authority was needed. However, it now appears that potential conflicts with the duals compensation and unemployment compensation laws should be addressed. S. 1398 includes no provision on this subject.

Recommendations: S. 1398 should be amended to include a provision that a current or former employee's receipt of deferred or delayed income under section 1141 after the school year end or while in a furlough status shall not be a basis for (1) a violation of the dual compensation law (5 U.S.C. 5533), or (2) denying or reducing any unemployment compensation benefits or any other Federal or Federally assisted program benefits. In addition, to avoid a conflict with other Federal personnel laws, we recommend that section 5541 of title 5, U.S. Code be amended by adding at the end a new item as follows: "employees whose pay is prorated under section 1141 (or 1140A if redesignated by S. 1398) of the Education Amendments of 1978, as amended (25 U.S.C. 2021)."

Issue: Section 512 also added a new section 1142 to P.L. 95–561 requiring the Secretary to pay Bureau employees previously agreed upon stipends for extra work in lieu of overtime or other premium pay. A stipend shall be paid as a supplemental to the new employee's base pay. The amount of the stipends are to be determined at the area level.

Discussion: A stipend has advantages for both the employees and the BIA. Employees may be more willing to take on extracurricular activities if they are assured of a specific amount of compensa-

tion ahead of time. School budgets can be better planned and overtime costs avoided.

Section 9(b) of S. 1398 amends the provision to permit rather than require the stipends. It also deletes the provision about determining the amounts at the area level but provides that stipends may be provided "for each Bureau area".

Recommendation: Amend section 9(b) of S. 1398 to require that the stipend amounts be not more than those in the public schools of the state where the BIA school involved is located.

Issue: Section 512 also added a new section 1143 to P.L. 95-561 requiring proceeds from employee housing rents to be used for improvement and repair of employees quarters and giving local BIA school supervisors authority to waive up to 90% of rental fees. Also, no rent is payable by educators in a non-pay status while school is not in session.

Discussion: The Administration strongly opposed the provision because of (1) the potential multi-million dollar annual cost, and (2) its discrimination against other educators not living in BIA employee housing and other Federal employees in general. (Also see the main part of this statement.) Section 9(c) of S. 1398 would reduce the 90% to 40% and limit the discretionary waivers to "isolated" schools. It would also change the "non-pay status" waiver to apply to those "in involuntary non-pay status and who have not obtained employment". It would be possible for an educator to receive unemployment compensation or welfare benefits and not have to pay rent.

Recommendation: S. 1398 should be amended to repeal section 1143 of P.L. 93-561 (25 U.S.C. 2023).

Changes In Existing Law

In compliance with subsection 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1398 are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

Education Amendments of 1978

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TITLE XI—INDIAN EDUCATION

* * * * * * *

Part B—Bureau of Indian Affairs Programs

STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS

Sec. 1121. (a) * * *

* * * * * * *

(d) A tribal governing body, or the local school board so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c), where such standards are deemed by such body to

be inappropriate or ill-conceived. The tribal governing body or designated school board shall [thereafter], *within 60 days thereafter,* submit to the Secretary a proposal for alternative standards that takes into account the specific needs of the tribe's children. *Such revised standards shall be established by the Secretary unless such standards are specifically rejected by the Secretary for good cause and the Secretary notifies each affected tribe and local school board in writing of such rejection. Such rejection shall be final and not reviewable.*

(e)(1) * * *

(2) [Within two years of the initial contract for the provision of educational services under Indian Self-Determination and Education Assistance Act] *Within two years after the date of enactment of the Indian Education Technical Amendments Act of 1985, or two years after the date of the initial contract for the provision of educational services under the Indian Self-Determination and Education Assistance Act, whichever is later,* each such school shall (A) be in compliance with the standards prescribed under subsection (a), or (B) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found. *The Secretary shall not rescind or fail to renew a contract because of this paragraph until at least one year after notifying the school of a failure to comply. During such one-year period, the Secretary shall render technical assistance to aid the school to comply.*

[(3) Within one year of the date of enactment of this paragraph, the Bureau shall, through contract with a national Indian organization, establish uniform fiscal control and fund accounting procedures for all contract schools. Such procedures shall yield data results comparable to those used by Bureau schools.]

(3) Within one year of the date of the enactment of the Indian Education Technical Amendments Act of 1985, the Bureau shall, either directly or through contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract schools. Such standards shall yield data results comparable to those used by Bureau schools.

(f) Subject to subsections (d) and (e), the Secretary shall begin to implement the standards established under this section immediately upon the date of their establishment. No later than January 1, 1981, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under this section. Such plan shall include, but not be limited to, detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school up to the level required by such standards. [Failure to implement or meet such standards shall not serve as the basis for taking any personnel action against any individual if (1) the failure is related to inadequate resources (as determined under sections 1128 and 1129 of this title), and (2) the Secretary has not submitted the information required by this subsection

and has not requested sufficient funds to cover the cost (as determined under such sections) of meeting such standards at the school concerned.]

(g)(1) Except as specifically required by statute, no school [operated by the Bureau of Indian Affairs on January 1, 1984, may be closed or its program curtailed] *or peripheral dormitory operated by the Bureau of Indian Affairs on or after the date of enactment of the Indian Education Technical Amendments Act of 1985 may be closed or consolidated or have its program substantially curtailed* unless done according to the requirements of this subsection, except that, in those cases where the tribal governing body, or the local school board concerned (if so designated by the tribal governing body), requests closure or consolidation, the requirements of this subsection shall not apply. *The requirements of this subsection shall not apply when a temporary closure, consolidation, or substantial curtailment is required by plant conditions which constitute an immediate hazard to health and safety.*

(2) The Secretary shall, by regulation, promulgate standards and procedures for the closing [or consolidation], *consolidation, or substantial curtailment* of Bureau schools in accordance with the requirements of this subsection.

[(3) Such standards and procedures shall require that, whenever closure or consolidation of a school is under consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, designated local school board, and parents will be notified as soon as such consideration or review begins and kept fully and currently informed with respect to such consideration or review. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

[(4) Prior to ordering any such school closing or consolidation, the Secretary shall insure that a study is made of each Indian child's educational and (where applicable) social needs and that adequate alternative services are guaranteed. Such a study shall include a description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative of the tribe involved, and the Director of the Bureau of Indian Affairs, Office of Indian Education Programs, with regard to such child.

[(5) Prior to taking any action to close or consolidate any such school. the Secretary shall make a full report to Congress describing the plans made (including schedules and plans for follow-up studies on the students affected), and the study and consultations undertaken pursuant to paragrph (4) of this subsection. No action may be taken in furtherance of any such proposed school closing or consolidation (including any action which would prejudice the personnel or programs of such school) until the end of the academic year following the academic year in which such report is made.]

(3) Such standards and procedures shall require that whenever closure, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, and designated local school board will be notified as soon as such consideration or review begins, kept fully and currently in-

formed, and afforded an opportunity to comment with respect to such consideration or review. When a formal decision is made to close, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and designated local school board shall be notified at least 6 months prior to the end of the school year preceding the proposed effective date. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

(4) The Secretary shall make a report to Congress, the affected tribe, and the designated local school board described the process of the active consideration or review referred to in paragraph (3). At a minimum, the report shall include a study of the impact of such action on the student population, with every effort to identify those students with particular educational and social needs, and to insure that alternative services are available to such students. Such report shall include the description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students. No irreversible action may be taken in furtherance of any such proposed school closure, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) until the end of the first full academic year after such report is made.

* * * * * * *

SCHOOL BOUNDARIES

SEC. 1124. (a) The Secretary shall, in accordance with this section, establish separate geographical attendance areas for each Bureau school.

[(b) No attendance area shall be established with respect to any such school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been given one year from the date of enactment of the Indian Education Amendments of 1984 to propose such boundaries. Such proposed boundaries shall be accepted unless the Secretary finds, after consultation with such body or board, that such boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the programs affected.]

(b) On or after the date of enactment of the Indian Education Technical Amendments Act of 1985, no attendance area shall be changed or established with respect to any such school unless the tribal governing body or the local school board (if so designated by the tribal governing body) has been (i) afforded at least six months notice of the intention of the Bureau to change or establish such attendance area, and (ii) given the opportunity to propose alternative boundaries. Any tribe may petition the Secretary for revision of existing attendance area boundaries. The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to

be served or do not provide adequate stability to all of the affected programs.

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BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS

SEC. 1126. (a) * * *

(b) The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with provision of education services by the Bureau, including (but not limited to) school or institution custodial or maintenance personnel. [All contract functions relating to education (including those pursuant to the Indian Self-Determination and Education Assistance Act) shall be supervised by the Director of the Office. Subject to the provisions in subsection (c), nothing in this Act shall be construed to require the provision of separate support services for Indian education.] *The Assistant Secretary for Indian Affairs shall provide for the adequate coordination between the affected Bureau Offices and the Office to facilitate the consideration of all contract functions relating to education, except that the Secretary shall review the applications for the new school starts which were filed with the Bureau before October 1, 1984, under the rules and guidelines in effect on the date the application was filed. Nothing in this Act shall be construed to require the provision of separate support services for Indian education.*

* * * * * * *

(d)(1) The Assistant Secretary shall submit in the annual Budget a plan—

(A) for school facilities to be constructed under the system required by section 1125(c); [and]

(B) for establishing priorities among projects and for the improvement and repair of education facilities, which together shall form the basis for the distribution of appropriated funds[.]; *and*

(C) including a 5-year plan for capital improvements.

(2) The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. [Such program shall be implemented by the Director of the Office.] Such program shall include, but not be limited to—

(A) a method of computing the amount necessary for each education facility;

(B) similar treatment of all Bureau and contract schools; [and]

(C) [the] *a notice of an* allocation of appropriated funds from the Director of the Office directly to the agency superintendents for education, or to the area education program administrators in the case of multitribal boarding schools located off reservation[.]; *and*

(D) a system for the conduct of routine preventive maintenance.

The agency superintendents for education, or the area education program administrator in the case of multitribal boarding schools

located off reservation, shall make arrangements for the maintenance of education facilities with the local supervisors of the Bureau maintenance personnel who are under the authority of the agency superintendent or area directors, respectively. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made in this regard by the agency superintendents for education and by the area education program administrators, except that no funds from this program may be [expended or transferred] *authorized for expenditure* by an agency superintendent for education or by an area education program administrator unless such superintendent or administrator is assured that the necessary maintenance has been, or will be, provided in a reasonable manner. Subject to the requirements of subsection (b) of this section, nothing in this Act shall be construed to require the provision of separate operations and maintenance personnel for the Office.

[(3) The Director of the Office shall supervise all Bureau education facilities, including local Bureau housing constructed for the purpose of housing Bureau personnel at the school site.]

[(4)] *(3)* The requirements of this subsection shall be implemented within 270 days following the date of enactment of the Indian Education *Technical* Amendments [of 1984.] *Act of 1985.*

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ALLOTMENT FORMULA

SEC. 1128. (a) The Secretary shall establish, by regulation adopted in accordance with section 1138, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. In establishing such formula, the Secretary shall consider—

(1) the number of Indian students served and size of the school;

(2) special cost factors, such as—

(A) isolation of the school;

(B) need for special staffing, transportation, or educational programs;

(C) food and housing costs;

(D) maintenance and repair costs associated with the physical condition of the educational facilities;

(E) special transportation and other costs of isolated and small schools;

(F) the costs of boarding arrangements, where determined necessary by a tribal governing body or designated local school board;

(G) costs associated with greater lengths of service by educational personnel; *and*

(H) special programs for gifted and talented students; [and]

[(I) costs associated with operating education and recreational programs on a 12-month basis;]

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[(e) The Director of the Office shall establish a separate fund from which monetary awards and quality step increases for employees shall be paid. Such payments shall not affect school allotments under this section.]

(e) Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

UNIFORM DIRECT FUNDING AND SUPPORT

SEC. 1129. (a)(1) Within six months after the date of enactment of this Act, the Secretary shall establish, by regulation adopted in accordance with section 1138, a system for the direct funding and support of all Bureau and contract schools. Such system shall allot funds, in accordance with section 1128. *Amounts appropriated for distribution under this section may be made available under paragraph (2) or under paragraph (3), as provided in the appropriation Act.*

(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 1128, amounts appropriated in the appropriations Act for any fiscal year shall become available for obligation by the affected schools on October 1 of the fiscal year for which they are appropriated without further action by the Secretary, and shall remain available through six months of the succeeding fiscal year. In order to effect the transition to the advance funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriations Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under section 1128 of 75 per centum of such appropriations, based on the school's student count for the preceding academic year; and

(ii) publish no later than November 1 of the fiscal year for which funds are appropriated the allotments to be made from the remaining 25 per centum, adjusted to reflect actual student count, such funds to be immediately available for obligation by the affected schools.

[(2)]*(3)*(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by [this section] *section 1128*, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools in July 1 of the fiscal year in which they are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year. In order to effect a transition to the forward funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under [this section] *section 1128* of 85 percent of such appropriation; and

(ii) publish, no later than September 30 of such preceding fiscal year, the allotments to be made under [this section] *section 1128* of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

(3) [Notwithstanding] *(4) Pursuant to guidelines established by the Assistant Secretary, notwithstanding* any law or regulation governing procurement by Federal agencies, the supervisor of each school receiving funds under [this section] *section 1128* shall, subject to school board approval, have the authority to expend no more than [10 percent] *$25,000 annually* of the funds allotted by [this section] *section 1128* to procure supplies and equipment, [with or] without competitive bidding.

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(c) Funds for self-determination grants under section 104(a)(2) of the Indian Self-Determination and Education Assistance Act shall not be used for providing technical assistance and training in the field of education by the Bureau unless such services are provided in accordance with a plan, agreed to by the tribe or tribes affected and the Bureau, under which control of education programs is intended to be transferred to such tribe or tribes within a specific period of time negotiated under such agreement. The Secretary [shall institute a program] *may approve applications* for funding tribal divisions of education and the development of tribal codes of education *from funds appropriated pursuant to section 104(a) of such Act.*

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ANNUAL REPORT

SEC. 1136. (a) * * *

(b) The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits are conducted of [the Bureau, the Office, and] each Bureau school at least once in every three years. Audits of Bureau schools shall be based upon the extent to which such school has complied with its local financial plan under section 1129.

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VOLUNTARY SERVICES

SEC. 1140. Notwithstanding section 1342 of title 31, United States Code, [an officer or employee of the Bureau or the Office] *the Secretary* may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau [and contract] schools. Nothing in this title shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees.

An individual providing volunteer services under this section is a Federal employee only for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

PRORATION OF PAY

SEC. [1141.] *1140A.* (a) Notwithstanding any other provision of law, *including laws relating to dual compensation,* the Secretary, at the election of the employee, shall prorate the salary of an employee employed in an education position for the academic school-year over the entire twelve month period. Each educator employed for the academic school-year shall annually elect to be paid on a twelve month basis or for those months while school is in session. No educator shall suffer a loss of pay or benefits, *including benefits under unemployment or other Federal or federally-assisted programs,* because of such election.

(b) During the course of such year the employee may change election once.

(c) That portion of the employee's pay which would be paid between academic school years may be paid in lump sum at the election of the employee.

(d) For the purposes of this section the terms "educator" and "education position" have the meaning contained in section 1131(n)(1) and (n)(2) of this title. This section applies to those individuals employed under the provisions of section 1131 of this title or title 5, United States Code.

EXTRACURRICULAR ACTIVITIES

SEC. [1142.] *1140B.* (a) Notwithstanding any other provision of law, the Secretary [shall provide] *may provide, for each Bureau area,* a stipend in lieu of overtime premium pay or compensatory time off. Any employee of the Bureau who performs additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend. Such stipend shall be paid as a supplement to the employee's base pay.

[(b) The amount of such stipends shall be determined at the area level.]

[(c)] *(b)* If an employee elects not to be compensated through the stipend established by this section, the appropriate provisions of title 5, United States Code, shall apply.

[(d)] *(c)* This section applies to all Bureau employees, whether employed under section 1131 of this title or title 5, United States Code.

HOUSING

[SEC. 1143. (a) The Secretary shall continue to apply rental rates for employee housing in accordance with all applicable laws and regulations. Proceeds from rental receipts shall be used for the improvement and repair of employee quarters.

[(b) Notwithstanding any other provision of law, the agency superintendent for education, or (for boarding schools located off-reservation) the area education program administrator, shall have the

authority to waive up to 90 percent of the rental rate for educators on school-wide basis to aid the school in recruiting and retaining educators. Decisions on rent waivers will be made after consultation with the appropriate level school board and the employees. Such superintendent's or administrator's decision (as the case may be) on the need for this assistance in recruitment and retention is final and not reviewable.

[(c) During periods when schools are not in session and educators have been placed in non-pay status, all rents payable by those educators shall be waived.

[(d) For the purposes of this section the term "educator" has the meaning contained in section 1131(n)(1) of this title. This section applies to those individuals employed under both the provisions of section 1131 of this title and title 5, United States Code.]

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